

A bill for an act

relating to public safety; providing that prior DWI driver's license revocations no longer enhance criminal penalties or trigger or accelerate DWI vehicle forfeitures; amending Minnesota Statutes 2008, sections 169A.03, subdivision 3; 169A.095; 169A.24, subdivision 1; 169A.275, subdivisions 1, 2, 3, 4, 5; 169A.28, subdivision 1; 169A.31, subdivision 2; 169A.44, subdivision 2; 169A.63, subdivisions 1, 3, 5, 6, 7, 8, 9; Minnesota Statutes 2009 Supplement, section 609.035, subdivision 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 169A.03, subdivision 3, is amended to read:

Subd. 3. **Aggravating factor.** "Aggravating factor" includes:

(1) a ~~qualified~~ prior impaired driving ~~incident~~ conviction within the ten years immediately preceding the current offense;

(2) having an alcohol concentration of 0.20 or more as measured at the time, or within two hours of the time, of the offense; or

(3) having a child under the age of 16 in the motor vehicle at the time of the offense if the child is more than 36 months younger than the offender.

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 2. Minnesota Statutes 2008, section 169A.095, is amended to read:

169A.095 DETERMINING NUMBER OF AGGRAVATING FACTORS.

When determining the number of aggravating factors present for purposes of this chapter, subject to section 169A.09 (sanctions for prior behavior to be based on separate

courses of conduct), each ~~qualified~~ prior impaired driving ~~incident~~ conviction within the ten years immediately preceding the current offense is counted as a separate aggravating factor.

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 3. Minnesota Statutes 2008, section 169A.24, subdivision 1, is amended to read:

Subdivision 1. **Degree described.** A person who violates section 169A.20 (driving while impaired) is guilty of first-degree driving while impaired if the person:

(1) commits the violation within ten years of the first of three or more ~~qualified~~ prior impaired driving ~~incidents~~ convictions;

(2) has previously been convicted of a felony under this section; or

(3) has previously been convicted of a felony under section 609.21, subdivision 1, clause (2), (3), (4), (5), or (6).

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 4. Minnesota Statutes 2008, section 169A.275, subdivision 1, is amended to read:

Subdivision 1. **Second offense.** (a) The court shall sentence a person who is convicted of a violation of section 169A.20 (driving while impaired) within ten years of a ~~qualified~~ prior impaired driving ~~incident~~ conviction to either:

(1) a minimum of 30 days of incarceration, at least 48 hours of which must be served in a local correctional facility; or

(2) eight hours of community work service for each day less than 30 days that the person is ordered to serve in a local correctional facility.

Notwithstanding section 609.135 (stay of imposition or execution of sentence), the penalties in this paragraph must be executed, unless the court departs from the mandatory minimum sentence under paragraph (b) or (c).

(b) Prior to sentencing, the prosecutor may file a motion to have a defendant described in paragraph (a) sentenced without regard to the mandatory minimum sentence established by that paragraph. The motion must be accompanied by a statement on the record of the reasons for it. When presented with the prosecutor's motion and if it finds that substantial mitigating factors exist, the court shall sentence the defendant without regard to the mandatory minimum sentence established by paragraph (a).

(c) The court may, on its own motion, sentence a defendant described in paragraph (a) without regard to the mandatory minimum sentence established by that paragraph if it finds that substantial mitigating factors exist and if its sentencing departure is accompanied by a statement on the record of the reasons for it. The court also may sentence the defendant without regard to the mandatory minimum sentence established by paragraph (a) if the defendant is sentenced to probation and ordered to participate in a program established under section 169A.74 (pilot programs of intensive probation for repeat DWI offenders).

(d) When any portion of the sentence required by paragraph (a) is not executed, the court should impose a sentence that is proportional to the extent of the offender's prior criminal and moving traffic violation record. Any sentence required under paragraph (a) must include a mandatory sentence that is not subject to suspension or a stay of imposition or execution, and that includes incarceration for not less than 48 hours or at least 80 hours of community work service.

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 5. Minnesota Statutes 2008, section 169A.275, subdivision 2, is amended to read:

Subd. 2. **Third offense.** (a) The court shall sentence a person who is convicted of a violation of section 169A.20 (driving while impaired) within ten years of the first of two ~~qualified~~ prior impaired driving ~~incidents~~ convictions to either:

(1) a minimum of 90 days of incarceration, at least 30 days of which must be served consecutively in a local correctional facility; or

(2) a program of intensive supervision of the type described in section 169A.74 (pilot programs of intensive probation for repeat DWI offenders) that requires the person to consecutively serve at least six days in a local correctional facility.

(b) The court may order that the person serve not more than 60 days of the minimum penalty under paragraph (a), clause (1), on home detention or in an intensive probation program described in section 169A.74.

(c) Notwithstanding section 609.135, the penalties in this subdivision must be imposed and executed.

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 6. Minnesota Statutes 2008, section 169A.275, subdivision 3, is amended to read:

Subd. 3. **Fourth offense.** (a) Unless the court commits the person to the custody of the commissioner of corrections as provided in section 169A.276 (mandatory penalties; felony violations), the court shall sentence a person who is convicted of a violation of section 169A.20 (driving while impaired) within ten years of the first of three ~~qualified~~ prior impaired driving ~~incidents~~ convictions to either:

(1) a minimum of 180 days of incarceration, at least 30 days of which must be served consecutively in a local correctional facility;

(2) a program of intensive supervision of the type described in section 169A.74 (pilot programs of intensive probation for repeat DWI offenders) that requires the person to consecutively serve at least six days in a local correctional facility; or

(3) a program of staggered sentencing involving a minimum of 180 days of incarceration, at least 30 days of which must be served consecutively in a local correctional facility.

(b) The court may order that the person serve not more than 150 days of the minimum penalty under paragraph (a), clause (1), on home detention or in an intensive probation program described in section 169A.74. Notwithstanding section 609.135, the penalties in this subdivision must be imposed and executed.

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 7. Minnesota Statutes 2008, section 169A.275, subdivision 4, is amended to read:

Subd. 4. **Fifth offense or more.** (a) Unless the court commits the person to the custody of the commissioner of corrections as provided in section 169A.276 (mandatory penalties; felony violations), the court shall sentence a person who is convicted of a violation of section 169A.20 (driving while impaired) within ten years of the first of four or more ~~qualified~~ prior impaired driving ~~incidents~~ convictions to either:

(1) a minimum of one year of incarceration, at least 60 days of which must be served consecutively in a local correctional facility;

(2) a program of intensive supervision of the type described in section 169A.74 (pilot programs of intensive probation for repeat DWI offenders) that requires the person to consecutively serve at least six days in a local correctional facility; or

(3) a program of staggered sentencing involving a minimum of one year of incarceration, at least 60 days of which must be served consecutively in a local correctional facility.

(b) The court may order that the person serve the remainder of the minimum penalty under paragraph (a), clause (1), on intensive probation using an electronic monitoring

system or, if such a system is unavailable, on home detention. Notwithstanding section 609.135, the penalties in this subdivision must be imposed and executed.

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 8. Minnesota Statutes 2008, section 169A.275, subdivision 5, is amended to read:

Subd. 5. **Level of care recommended in chemical use assessment.** Unless the court commits the person to the custody of the commissioner of corrections as provided in section 169A.276 (mandatory penalties; felony violations), in addition to other penalties required under this section, the court shall order a person to submit to the level of care recommended in the chemical use assessment conducted under section 169A.70 (alcohol safety program; chemical use assessments) if the person is convicted of violating section 169A.20 (driving while impaired) while having an alcohol concentration of 0.20 or more as measured at the time, or within two hours of the time, of the offense or if the violation occurs within ten years of one or more ~~qualified~~ prior impaired driving incidents convictions.

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 9. Minnesota Statutes 2008, section 169A.28, subdivision 1, is amended to read:

Subdivision 1. **Mandatory consecutive sentences.** (a) The court shall impose consecutive sentences when it sentences a person for:

(1) violations of section 169A.20 (driving while impaired) arising out of separate courses of conduct;

(2) a violation of section 169A.20 when the person, at the time of sentencing, is on probation for, or serving, an executed sentence for a violation of section 169A.20 or Minnesota Statutes 1998, section 169.121 (driver under the influence of alcohol or controlled substance) or 169.129 (aggravated DWI-related violations; penalty), and the prior sentence involved a separate course of conduct; or

(3) a violation of section 169A.20 and another offense arising out of a single course of conduct that is listed in subdivision 2, paragraph (e), when the person has five or more ~~qualified~~ prior impaired driving incidents convictions within the past ten years.

(b) The requirement for consecutive sentencing in paragraph (a) does not apply if the person is being sentenced to an executed prison term for a violation of section 169A.20

6.1 (driving while impaired) under circumstances described in section 169A.24 (first-degree
6.2 driving while impaired).

6.3 **EFFECTIVE DATE.** This section is effective July 1, 2010, and applies to crimes
6.4 committed on or after that date.

6.5 Sec. 10. Minnesota Statutes 2008, section 169A.31, subdivision 2, is amended to read:

6.6 Subd. 2. **Gross misdemeanor alcohol-related school bus or Head Start**
6.7 **bus driving.** A person who violates subdivision 1 is guilty of gross misdemeanor
6.8 alcohol-related school bus or Head Start bus driving if:

6.9 (1) the violation occurs while a child under the age of 16 is in the vehicle, if the child
6.10 is more than 36 months younger than the violator; or

6.11 (2) the violation occurs within ten years of a ~~qualified~~ prior impaired driving
6.12 ~~incident~~ conviction.

6.13 **EFFECTIVE DATE.** This section is effective July 1, 2010, and applies to crimes
6.14 committed on or after that date.

6.15 Sec. 11. Minnesota Statutes 2008, section 169A.44, subdivision 2, is amended to read:

6.16 Subd. 2. **Felony violations.** (a) A person charged with violating section 169A.20
6.17 within ten years of the first of three or more ~~qualified~~ prior impaired driving ~~incidents~~
6.18 convictions may be released from detention only if the following conditions are imposed:

6.19 (1) the conditions described in subdivision 1, paragraph (b), if applicable;

6.20 (2) the impoundment of the registration plates of the vehicle used to commit the
6.21 violation, unless already impounded;

6.22 (3) if the vehicle used to commit the violation was an off-road recreational vehicle
6.23 or a motorboat, the impoundment of the off-road recreational vehicle or motorboat;

6.24 (4) a requirement that the person report weekly to a probation agent;

6.25 (5) a requirement that the person abstain from consumption of alcohol and controlled
6.26 substances and submit to random alcohol tests or urine analyses at least weekly;

6.27 (6) a requirement that, if convicted, the person reimburse the court or county for the
6.28 total cost of these services; and

6.29 (7) any other conditions of release ordered by the court.

6.30 (b) In addition to setting forth conditions of release under paragraph (a), if required
6.31 by court rule, the court shall also fix the amount of money bail without other conditions
6.32 upon which the defendant may obtain release.

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 12. Minnesota Statutes 2008, section 169A.63, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the meanings given them.

(b) "Appropriate agency" means a law enforcement agency that has the authority to make an arrest for a violation of a designated offense or to require a test under section 169A.51 (chemical tests for intoxication).

(c) "Claimant" means an owner of a motor vehicle or a person claiming a leasehold or security interest in a motor vehicle.

~~(d) "Designated license revocation" includes a license revocation under section 169A.52 (license revocation for test failure or refusal) or a license disqualification under section 171.165 (commercial driver's license disqualification) resulting from a violation of section 169A.52; within ten years of the first of two or more qualified prior impaired driving incidents.~~

~~(e)~~ (d) "Designated offense" includes:

(1) a violation of section 169A.20 (driving while impaired) under the circumstances described in section 169A.24 (first-degree driving while impaired), or 169A.25 (second-degree driving while impaired); or

(2) a violation of section 169A.20 or an ordinance in conformity with it:

(i) by a person whose driver's license or driving privileges have been canceled as inimical to public safety under section 171.04, subdivision 1, clause (10), and not reinstated; or

(ii) by a person who is subject to a restriction on the person's driver's license under section 171.09 (commissioner's license restrictions), which provides that the person may not use or consume any amount of alcohol or a controlled substance.

~~(f)~~ (e) "Family or household member" means:

(1) a parent, stepparent, or guardian;

(2) any of the following persons related by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or

(3) persons residing together or persons who regularly associate and communicate with one another outside of a workplace setting.

~~(g)~~ (f) "Motor vehicle" and "vehicle" do not include a vehicle which is stolen or taken in violation of the law.

(h) (g) "Owner" means a person legally entitled to possession, use, and control of a motor vehicle, including a lessee of a motor vehicle if the lease agreement has a term of 180 days or more. There is a rebuttable presumption that a person registered as the owner of a motor vehicle according to the records of the Department of Public Safety is the legal owner. For purposes of this section, if a motor vehicle is owned jointly by two or more people, each owner's interest extends to the whole of the vehicle and is not subject to apportionment.

(i) (h) "Prosecuting authority" means the attorney in the jurisdiction in which the designated offense occurred who is responsible for prosecuting violations of a designated offense or a designee. If a state agency initiated the forfeiture, and the attorney responsible for prosecuting the designated offense declines to pursue forfeiture, the Attorney General's Office or its designee may initiate forfeiture under this section.

(j) (i) "Security interest" means a bona fide security interest perfected according to section 168A.17, subdivision 2, based on a loan or other financing that, if a vehicle is required to be registered under chapter 168, is listed on the vehicle's title.

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 13. Minnesota Statutes 2008, section 169A.63, subdivision 3, is amended to read:

Subd. 3. **Right to possession vests immediately; custody.** All right, title, and interest in a vehicle subject to forfeiture under this section vests in the appropriate agency upon commission of the conduct resulting in the designated offense ~~or designated license revocation~~ giving rise to the forfeiture. Any vehicle seized under this section is not subject to replevin, but is deemed to be in the custody of the appropriate agency subject to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When a vehicle is seized under this section, the appropriate agency may:

- (1) place the vehicle under seal;
- (2) remove the vehicle to a place designated by it;
- (3) place a disabling device on the vehicle; and
- (4) take other steps reasonable and necessary to secure the vehicle and prevent waste.

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 14. Minnesota Statutes 2008, section 169A.63, subdivision 5, is amended to read:

Subd. 5. **Evidence.** Certified copies of court records and motor vehicle and driver's license records concerning ~~qualified~~ prior impaired driving ~~incidents~~ convictions are admissible as substantive evidence where necessary to prove the commission of a designated offense ~~or the occurrence of a designated license revocation.~~

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 15. Minnesota Statutes 2008, section 169A.63, subdivision 6, is amended to read:

Subd. 6. **Vehicle subject to forfeiture.** (a) A motor vehicle is subject to forfeiture under this section if it was used in the commission of a designated offense ~~or was used in conduct resulting in a designated license revocation.~~

(b) Motorboats subject to seizure and forfeiture under this section also include their trailers.

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 16. Minnesota Statutes 2008, section 169A.63, subdivision 7, is amended to read:

Subd. 7. **Limitations on vehicle forfeiture.** (a) A vehicle is presumed subject to forfeiture under this section if:

(1) the driver is convicted of the designated offense upon which the forfeiture is based; or

(2) the driver fails to appear for a scheduled court appearance with respect to the designated offense charged and fails to voluntarily surrender within 48 hours after the time required for appearance; or

~~(3) the driver's conduct results in a designated license revocation and the driver fails to seek judicial review of the revocation in a timely manner as required by section 169A.53, subdivision 2, (petition for judicial review), or the license revocation is judicially reviewed and sustained under section 169A.53, subdivision 2.~~

(b) A vehicle encumbered by a security interest perfected according to section 168A.17, subdivision 2, or subject to a lease that has a term of 180 days or more, is subject to the interest of the secured party or lessor unless the party or lessor had knowledge of or consented to the act upon which the forfeiture is based. However, when the proceeds of the sale of a seized vehicle do not equal or exceed the outstanding loan balance, the appropriate agency shall remit all proceeds of the sale to the secured party after deducting the agency's costs for the seizure, tow, storage, forfeiture, and sale of the vehicle. If the sale of the

vehicle is conducted in a commercially reasonable manner consistent with the provisions of section 336.9-610, the agency is not liable to the secured party for any amount owed on the loan in excess of the sale proceeds. The validity and amount of a nonperfected security interest must be established by its holder by clear and convincing evidence.

(c) Notwithstanding paragraph (b), the secured party's or lessor's interest in a vehicle is not subject to forfeiture based solely on the secured party's or lessor's knowledge of the act or omission upon which the forfeiture is based if the secured party or lessor demonstrates by clear and convincing evidence that the party or lessor took reasonable steps to terminate use of the vehicle by the offender.

(d) A motor vehicle is not subject to forfeiture under this section if its owner can demonstrate by clear and convincing evidence that the owner did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law or that the owner took reasonable steps to prevent use of the vehicle by the offender. If the offender is a family or household member of the owner and has three or more prior impaired driving convictions, the owner is presumed to know of any vehicle use by the offender that is contrary to law. "Vehicle use contrary to law" includes, but is not limited to, violations of the following statutes:

(1) section 171.24 (violations; driving without valid license);

(2) section 169.791 (criminal penalty for failure to produce proof of insurance);

(3) section 171.09 (driving restrictions; authority, violations);

(4) section 169A.20 (driving while impaired);

(5) section 169A.33 (underage drinking and driving); and

(6) section 169A.35 (open bottle law).

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 17. Minnesota Statutes 2008, section 169A.63, subdivision 8, is amended to read:

Subd. 8. **Administrative forfeiture procedure.** (a) A motor vehicle used to commit a designated offense ~~or used in conduct resulting in a designated license revocation~~ is subject to administrative forfeiture under this subdivision.

(b) When a motor vehicle is seized under subdivision 2, or within a reasonable time after seizure, the appropriate agency shall serve the driver or operator of the vehicle with a notice of the seizure and intent to forfeit the vehicle. Additionally, when a motor vehicle is seized under subdivision 2, or within a reasonable time after that, all persons known to have an ownership, possessory, or security interest in the vehicle must be notified of the seizure and the intent to forfeit the vehicle. For those vehicles required to be registered

11.1 under chapter 168, the notification to a person known to have a security interest in the
11.2 vehicle is required only if the vehicle is registered under chapter 168 and the interest
11.3 is listed on the vehicle's title. Notice mailed by certified mail to the address shown
11.4 in Department of Public Safety records is sufficient notice to the registered owner of
11.5 the vehicle. For motor vehicles not required to be registered under chapter 168, notice
11.6 mailed by certified mail to the address shown in the applicable filing or registration for
11.7 the vehicle is sufficient notice to a person known to have an ownership, possessory, or
11.8 security interest in the vehicle. Otherwise, notice may be given in the manner provided by
11.9 law for service of a summons in a civil action.

11.10 (c) The notice must be in writing and contain:

11.11 (1) a description of the vehicle seized;

11.12 (2) the date of seizure; and

11.13 (3) notice of the right to obtain judicial review of the forfeiture and of the procedure
11.14 for obtaining that judicial review, printed in English, Hmong, and Spanish. Substantially
11.15 the following language must appear conspicuously: "IF YOU DO NOT DEMAND
11.16 JUDICIAL REVIEW EXACTLY AS PRESCRIBED IN MINNESOTA STATUTES,
11.17 SECTION 169A.63, SUBDIVISION 8, YOU LOSE THE RIGHT TO A JUDICIAL
11.18 DETERMINATION OF THIS FORFEITURE AND YOU LOSE ANY RIGHT YOU
11.19 MAY HAVE TO THE ABOVE-DESCRIBED PROPERTY. YOU MAY NOT HAVE TO
11.20 PAY THE FILING FEE FOR THE DEMAND IF DETERMINED YOU ARE UNABLE
11.21 TO AFFORD THE FEE. IF THE PROPERTY IS WORTH \$7,500 OR LESS, YOU MAY
11.22 FILE YOUR CLAIM IN CONCILIATION COURT. YOU DO NOT HAVE TO PAY
11.23 THE CONCILIATION COURT FILING FEE IF THE PROPERTY IS WORTH LESS
11.24 THAN \$500."

11.25 (d) Within 30 days following service of a notice of seizure and forfeiture under this
11.26 subdivision, a claimant may file a demand for a judicial determination of the forfeiture.
11.27 The demand must be in the form of a civil complaint and must be filed with the court
11.28 administrator in the county in which the seizure occurred, together with proof of service of
11.29 a copy of the complaint on the prosecuting authority having jurisdiction over the forfeiture
11.30 and the appropriate agency that initiated the forfeiture, including the standard filing fee
11.31 for civil actions unless the petitioner has the right to sue in forma pauperis under section
11.32 563.01. If the value of the seized property is \$7,500 or less, the claimant may file an
11.33 action in conciliation court for recovery of the seized vehicle. A copy of the conciliation
11.34 court statement of claim must be served personally or by mail on the prosecuting authority
11.35 having jurisdiction over the forfeiture, as well as on the appropriate agency that initiated
11.36 the forfeiture, within 30 days following service of the notice of seizure and forfeiture

12.1 under this subdivision. If the value of the seized property is less than \$500, the claimant
12.2 does not have to pay the conciliation court filing fee.

12.3 No responsive pleading is required of the prosecuting authority and no court fees
12.4 may be charged for the prosecuting authority's appearance in the matter. The prosecuting
12.5 authority may appear for the appropriate agency. Pleadings, filings, and methods of
12.6 service are governed by the Rules of Civil Procedure.

12.7 (e) The complaint must be captioned in the name of the claimant as plaintiff and
12.8 the seized vehicle as defendant, and must state with specificity the grounds on which the
12.9 claimant alleges the vehicle was improperly seized, the claimant's interest in the vehicle
12.10 seized, and any affirmative defenses the claimant may have. Notwithstanding any law
12.11 to the contrary, an action for the return of a vehicle seized under this section may not be
12.12 maintained by or on behalf of any person who has been served with a notice of seizure and
12.13 forfeiture unless the person has complied with this subdivision.

12.14 (f) If the claimant makes a timely demand for a judicial determination under this
12.15 subdivision, the forfeiture proceedings must be conducted as provided under subdivision 9.

12.16 **EFFECTIVE DATE.** This section is effective July 1, 2010, and applies to crimes
12.17 committed on or after that date.

12.18 Sec. 18. Minnesota Statutes 2008, section 169A.63, subdivision 9, is amended to read:

12.19 Subd. 9. **Judicial forfeiture procedure.** (a) This subdivision governs judicial
12.20 determinations of the forfeiture of a motor vehicle used to commit a designated offense
12.21 ~~or used in conduct resulting in a designated license revocation.~~ An action for forfeiture is
12.22 a civil in rem action and is independent of any criminal prosecution. All proceedings are
12.23 governed by the Rules of Civil Procedure.

12.24 (b) If no demand for judicial determination of the forfeiture is pending, the
12.25 prosecuting authority may, in the name of the jurisdiction pursuing the forfeiture, file a
12.26 separate complaint against the vehicle, describing it, specifying that it was used in the
12.27 commission of a designated offense ~~or was used in conduct resulting in a designated~~
12.28 ~~license revocation,~~ and specifying the time and place of its unlawful use.

12.29 (c) The prosecuting authority may file an answer to a properly served demand
12.30 for judicial determination, including an affirmative counterclaim for forfeiture. The
12.31 prosecuting authority is not required to file an answer.

12.32 (d) A judicial determination under this subdivision must not precede adjudication in
12.33 the criminal prosecution of the designated offense without the consent of the prosecuting
12.34 authority. The district court administrator shall schedule the hearing as soon as practicable
12.35 after adjudication in the criminal prosecution. The district court administrator shall

establish procedures to ensure efficient compliance with this subdivision. The hearing is to the court without a jury.

(e) There is a presumption that a vehicle seized under this section is subject to forfeiture if the prosecuting authority establishes that the vehicle was used in the commission of a designated offense ~~or designated license revocation~~. A claimant bears the burden of proving any affirmative defense raised.

(f) If the forfeiture is based on the commission of a designated offense and the person charged with the designated offense appears in court as required and is not convicted of the offense, the court shall order the property returned to the person legally entitled to it upon that person's compliance with the redemption requirements of section 169A.42. ~~If the forfeiture is based on a designated license revocation, and the license revocation is rescinded under section 169A.53, subdivision 3 (judicial review hearing, issues, order, appeal), the court shall order the property returned to the person legally entitled to it upon that person's compliance with the redemption requirements of section 169A.42.~~

(g) If the lawful ownership of the vehicle used in the commission of a designated offense ~~or used in conduct resulting in a designated license revocation~~ can be determined and the owner makes the demonstration required under subdivision 7, paragraph (d), the vehicle must be returned immediately upon the owner's compliance with the redemption requirements of section 169A.42.

(h) If the court orders the return of a seized vehicle under this subdivision it must order that filing fees be reimbursed to the person who filed the demand for judicial determination. In addition, the court may order sanctions under section 549.211 (sanctions in civil actions). Any reimbursement fees or sanctions must be paid from other forfeiture proceeds of the law enforcement agency and prosecuting authority involved and in the same proportion as distributed under subdivision 10, paragraph (b).

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.

Sec. 19. Minnesota Statutes 2009 Supplement, section 609.035, subdivision 2, is amended to read:

Subd. 2. Consecutive sentences. (a) When a person is being sentenced for a violation of a provision listed in paragraph (e), the court may sentence the person to a consecutive term of imprisonment for a violation of any other provision listed in paragraph (e), notwithstanding the fact that the offenses arose out of the same course of conduct, subject to the limitation on consecutive sentences contained in section 609.15, subdivision 2, and except as provided in paragraphs (b), (c), and (f).

(b) When a person is being sentenced for a violation of section 171.09, 171.20, 171.24, or 171.30, the court may not impose a consecutive sentence for another violation of a provision in chapter 171.

(c) When a person is being sentenced for a violation of section 169.791 or 169.797, the court may not impose a consecutive sentence for another violation of a provision of sections 169.79 to 169.7995.

(d) This subdivision does not limit the authority of the court to impose consecutive sentences for crimes arising on different dates or to impose a consecutive sentence when a person is being sentenced for a crime and is also in violation of the conditions of a stayed or otherwise deferred sentence under section 609.135.

(e) This subdivision applies to misdemeanor and gross misdemeanor violations of the following if the offender has two or more prior impaired driving convictions as defined in section 169A.03 within the past ten years:

(1) section 169A.20, subdivision 1, 1a, 1b, or 1c, driving while impaired;

(2) section 169A.20, subdivision 2, test refusal;

(3) section 169.791, failure to provide proof of insurance;

(4) section 169.797, failure to provide vehicle insurance;

(5) section 171.09, violation of condition of restricted license;

(6) section 171.20, subdivision 2, operation after revocation, suspension, cancellation, or disqualification;

(7) section 171.24, driving without valid license; and

(8) section 171.30, violation of condition of limited license.

(f) When a court is sentencing an offender for a violation of section 169A.20 and a violation of an offense listed in paragraph (e), and the offender has five or more ~~qualified~~ prior impaired driving ~~incidents~~ convictions, as defined in section 169A.03, within the past ten years, the court shall sentence the offender to serve consecutive sentences for the offenses, notwithstanding the fact that the offenses arose out of the same course of conduct.

EFFECTIVE DATE. This section is effective July 1, 2010, and applies to crimes committed on or after that date.